

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

DWAIN EDWARD THOMAS,)	
)	
Plaintiff,)	
)	
v.)	Case No. CIV-20-944-D
)	
KEVIN STITT, Governor, <i>et al.</i> ,)	
)	
Defendants.)	

ORDER

This matter is before the Court for review of the Report and Recommendation of United States Magistrate Judge Gary M. Purcell, issued under 28 U.S.C. § 636(b)(1)(B). Judge Purcell finds Plaintiff has sufficient funds to pay the filing fee for this action and recommends his Application for Leave to Proceed In Forma Pauperis (IFP) be denied. Judge Purcell further recommends this action be dismissed without prejudice unless Plaintiff pays the full filing fee by October 13, 2020.

Plaintiff is a state prison inmate appearing *pro se*. On October 6, 2020, the Clerk received a payment in the amount of \$350.00 made by the State of Oklahoma on Plaintiff's behalf from his institutional account. The Court understands this payment as Plaintiff's acceptance of Judge Purcell's finding that he should be denied IFP status and pay the filing fee, but a mistaken belief that \$350.00 represents the correct amount.¹ The full filing fee for a civil action without IFP status is \$400.00. *See* 28 U.S.C. § 1914(b) (requiring clerks

¹ Judge Purcell did not state the amount of the full filing fee in his R&R.

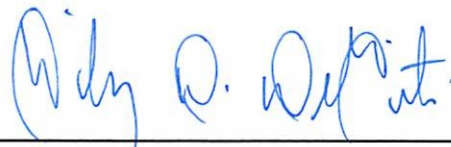
to collect additional fees prescribed by the Judicial Conference); Judicial Conf. Sched. Fees, Dist. Ct. Misc. Fee Sched., Item 2 (“Administrative fee for filing a civil action, suit, or proceeding in a district court, \$50. This fee does not apply to applications for a writ of habeas corpus or to persons granted in forma pauperis status under 28 U.S.C. § 1915.”).

Under these circumstances, the Court finds that Plaintiff has waived further review of the issue of whether he should be authorized to proceed IFP. *See Moore v. United States*, 950 F.2d 656, 659 (10th Cir. 1991); *see also United States v. 2121 E. 30th St.*, 73 F.3d 1057, 1060 (10th Cir. 1996). Further, upon *de novo* consideration, the Court finds that Judge Purcell’s analysis is correct, and concurs in his recommendation to deny IFP status. However, because Plaintiff has made a mistake in the payment amount, the Court finds that Plaintiff should receive additional time to pay the full filing fee for this action.

IT IS THEREFORE ORDERED that the Report and Recommendation [Doc. No. 7] is ADOPTED, except the deadline for Plaintiff’s payment is extended as set forth herein. Plaintiff’s Application for Leave to Proceed In Forma Pauperis [Doc. No. 3] is DENIED.

IT IS FURTHER ORDERED that Plaintiff is directed to pay \$50.00, which is the additional amount needed to satisfy the full filing fee, by November 2, 2020, or to show cause by the date why the payment cannot be made.

IT IS SO ORDERED this 7th day of October, 2020.



TIMOTHY D. DeGIUSTI
Chief United States District Judge